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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALEJANDRO MORALES, EDUARDO ARAGON, ALEX SANTIAGO, JORGE ALVAREZ VILCHIS, and FIDEL CANTU ORTEGA, *individually and on behalf of others similarly situated,*

Plaintiffs,

-against-

BULEE CAFE, LTD. (d/b/a SARAH'S ARTISANAL KITCHEN), YONG WON BU and JOHN DOE LEE,

Defendants.

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COMPLAINT

COLLECTIVE ACTION UNDER 29 U.S.C. § 216(b)

ECF Case

Plaintiffs Victor Morales Perez, Eduardo Aragon, Alex Santiago, Jorge Alvarez Vilchis, and Fidel Cantu Ortega, individually and on behalf of others similarly situated (collectively, "Plaintiffs"), by and through their attorneys, Michael Faillace & Associates, P.C., upon their knowledge and belief, and as against Bulee Cafe, Ltd. (d/b/a Sarah's Artisanal Kitchen) ("Defendant Corporation"), Yong Won Bu and John Doe Lee allege as follows:

NATURE OF THE ACTION

1. Plaintiffs are former employees of defendants Bulee Cafe, Ltd. (d/b/a Sarah's Artisanal Kitchen), Yong Won Bu and John Doe Lee (collectively, "Defendants").

2. Defendants owned, operated, or controlled a cafeteria/deli located at 270 Madison Avenue, New York, New York 10016 under the name Sarah's Artisanal Kitchen.

3. Upon information and belief, individual defendants Yong Won Bu and John doe Lee serve or served as owners, managers, principals, or agents of Defendant Corporation and, through this corporate entity, operate or operated the restaurant as a joint or unified enterprise.

4. Plaintiffs were employed as cooks, salad preparers, griller, and expediter of catering orders and ostensibly as a delivery worker. However, Plaintiff Alvarez, the delivery worker, was required to spend a considerable part of his work day performing non-tipped duties, including working as a cashier, working in the pasta bar, cooking, working as a porter, cutting vegetables and meats, peeling shrimp, cleaning the kitchen, the bathroom, the refrigerator, the basement and the walls, dishwashing, sweeping and mopping, bringing in and stocking delivery, twisting and tying up boxes, assisting in the preparation of sauces, cutting cheese with machines, taking out the garbage and preparing juices (hereinafter the "non-tipped duties").

5. At all times relevant to this Complaint, Plaintiffs worked for Defendants in excess of 40 hours per week, without appropriate minimum wage and overtime compensation for the hours that they worked.

6. Rather, Defendants failed to maintain accurate recordkeeping of the hours worked, failed to pay Plaintiffs appropriately for any hours worked, either at the straight rate of pay or for any additional overtime premium.

7. Further, Defendants failed to pay Plaintiffs the required "spread of hours" pay for any day in which they worked over 10 hours per day.

8. Defendants employed and accounted for Plaintiff Alvarez as a delivery worker in their payroll, but in actuality his duties included a significant amount of time spent performing the non-tipped functions such as those alleged above.

9. At all times, regardless of duties, Defendants paid Plaintiff Alvarez and all other tipped workers below the minimum wage.

10. However, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Alvarez's non-tipped duties exceeded 20% of each workday (12 N.Y.C.R.R. § 146).

11. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiff Alvarez's actual duties in payroll records to avoid paying Plaintiff Alvarez at the minimum wage rate, and to enable them to pay him at the lower tip-credited rate by designating him as a delivery worker instead of a non-tipped employee.

12. In addition, Defendants maintained a policy and practice of unlawfully appropriating Plaintiffs Aragon and alvarez and other tipped employees' tips and made unlawful deductions from these Plaintiffs' and other tipped employees' wages.

13. Defendants' conduct extended beyond Plaintiffs to all other similarly situated employees.

14. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiffs and other employees to work in excess of forty (40) hours per week without providing the minimum wage and overtime compensation required by federal and state law and regulations.

15. Plaintiffs now bring this action on behalf of themselves, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor

Standards Act of 1938, 29 U.S.C. § 201 *et seq*. ("FLSA"), and for violations of the N.Y. Labor Law §§ 190 *et seq*. and 650 *et seq.* (the "NYLL"), and the "spread of hours" and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6 (herein the "Spread of Hours Wage Order"), including applicable liquidated damages, interest, attorneys' fees and costs.

16. Plaintiffs seek certification of this action as a collective action on behalf of themselves individually and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the FLSA, and supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367(a).

18. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because all, or a substantial portion of, the events or omissions giving rise to the claims occurred in this district, Defendants maintain their corporate headquarters and offices within this district, and Defendants operated a cafeteria/deli located in this district. Further, Plaintiffs were employed by Defendants in this district.

THE PARTIES

Plaintiffs

19. Plaintiff Alejandro Morales ("Plaintiff Morales" or "Mr. Morales") is an adult individual residing in New York County, New York. Plaintiff Morales was employed by Defendants from approximately January 2014 until on or about March 2017.

20. Plaintiff Eduardo Aragon ("Plaintiff Aragon" or "Mr. Aragon") is an adult individual residing in Queens County, New York. Plaintiff Aragon was employed by Defendants from approximately June 2015 until on or about September 2016.

21. Plaintiff Alex Santiago ("Plaintiff Santiago" or "Mr. Santiago") is an adult individual residing in Bronx County, New York. Plaintiff Santiago was employed by Defendants from approximately November 2015 until on or about March 17, 2017.

22. Plaintiff Jorge Alvarez Vilchis ("Plaintiff Alvarez" or "Mr. Alvarez") is an adult individual residing in Queens County, New York. Plaintiff Alvarez was employed by Defendants from approximately May 2015 until on or about November 1, 2016 and from approximately November 17, 2016 until on or about March 17, 2017.

23. Plaintiff Fidel Cantu Ortega ("Plaintiff Cantu " or "Mr. Cantu ") is an adult individual residing in Bronx County, New York. Plaintiff Cantu was employed by Defendants from approximately January 2015 until on or about March 2017.

Defendants

24. At all relevant times, Defendants owned, operated, or controlled a cafeteria/deli located at 270 Madison Avenue, New York, N.Y. 10016 under the name "Sarah's Artisanal Kitchen." Upon information and belief, Bulee Cafe, Ltd. (Defendant Corporation) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintained its principal place of business at 270 Madison Avenue, New York, N.Y. 10016.

25. Defendant Yong Won Bu is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Yong Won Bu is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporation.

Defendant Yong Won Bu possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controls significant functions of Defendant Corporation. He determined the wages and compensation of the employees of Defendants, including Plaintiffs, established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

26. Defendant John Doe Lee is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant John Doe Lee is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporation. Defendant John Doe Lee possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controls significant functions of Defendant Corporation. He determined the wages and compensation of the employees of Defendants, including Plaintiffs, established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

27. Defendants operated a restaurant located in the midtown east section of Manhattan in New York City.

28. The individual defendants, Yong Won Bu and John Doe Lee, possess operational control over Defendant Corporation, possess ownership interests in Defendant Corporation, and control significant functions of Defendant Corporation.

29. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method, and share control over the employees.

30. Each Defendant possessed substantial control over Plaintiffs' (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiffs, and all similarly situated individuals, referred to herein.

31. Defendants jointly employed Plaintiffs (and all similarly situated employees) and are Plaintiffs' (and all similarly situated employees') employers within the meaning of 29 U.S.C. 201 *et seq*. and the NYLL.

32. In the alternative, Defendants constitute a single employer of Plaintiffs and/or similarly situated individuals.

33. Upon information and belief, individual defendants Yong Won Bu and John doe Lee operated Defendant Corporation as either an alter ego of themselves and/or fail to operate Defendant Corporation as an entity legally separate and apart from themselves, by among other things:

a. failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a corporation,

b. defectively forming or maintaining the corporate entity of Defendant Corporation, by, amongst other things, failing to hold annual meetings or maintaining appropriate corporate records,

c. transferring assets and debts freely as between all Defendants,

d. operating Defendant Corporation for their own benefit as the sole or majority shareholders,

e. operating Defendant Corporation for their own benefit and maintaining control over it as a closed corporation,

f. intermingling assets and debts of their own with Defendant Corporation,

g. diminishing and/or transferring assets of Defendant Corporation to avoid full liability as necessary to protect their own interests, and

h. other actions evincing a failure to adhere to the corporate form.

34. At all relevant times, Defendants were Plaintiffs' employers within the meaning of the FLSA and New York Labor Law. Defendants had the power to hire and fire Plaintiffs, controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for Plaintiffs' services.

35. In each year from 2014 to 2017, Defendants, both separately and jointly, had a gross annual volume of sales of not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated).

36. In addition, upon information and belief, Defendants and/or their enterprise were directly engaged in interstate commerce. As an example, numerous items that were used in the cafeteria/deli on a daily basis were goods produced outside of the State of New York.

Individual Plaintiffs

37. Plaintiffs are former employees of Defendants who were employed as grill workers, salad preparers, cooks, catering expediters, and delivery workers. Plaintiffs seek to represent a class of similarly situated individuals under 29 U.S.C. 216(b).

Plaintiff Alejandro Morales

38. Plaintiff Morales was employed by Defendants from approximately January 2014 until on or about March 2017.

39. Defendants employed Plaintiff Morales as a grill worker.

40. Plaintiff Morales regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

41. Plaintiff Morales' work duties required neither discretion nor independent judgment.

42. Throughout his employment with Defendants, Plaintiff Morales regularly worked in excess of 40 hours per week.

43. From approximately January 2014 until on or about March 2017, Plaintiff Morales worked from approximately 5:00 a.m. until on or about 4:00 p.m., Mondays through Fridays and from approximately 7:00 a.m. until on or about 4:00 p.m. on Saturdays (typically 64 hours per week).

44. Throughout his entire employment with Defendants, Plaintiff Morales was paid his wages in cash.

45. From approximately January 2014 until on or about September 2016, defendants paid Plaintiff Morales $10 per hour.

46. From approximately October 2016 until on or about March 2017, defendants paid Plaintiff Morales $11.00 per hour.

47. Plaintiff Morales' pay did not vary even when he was required to stay later or work a longer day than his usual schedule.

48. For example, defendants required Plaintiff Morales to start working one hour prior to his scheduled start time and continue working one hour past his scheduled departure time Mondays through Fridays and did not pay him for the additional time they required him to work.

49. Although defendants granted Plaintiff Morales a 30-minute meal break, he often was unable to take it because of the demands of his job.

50. However, defendants still deducted $30.00 from his weekly pay for meals he often was unable to eat.

51. No notifications, either in the form of posted notices or other means, were ever given to Plaintiff Morales regarding overtime and wages under the FLSA and NYLL.

52. Furthermore, Defendants never provided Plaintiff Morales with a statement of wages with each payment of wages, as required by NYLL 195(3).

53. Instead, defendants required Plaintiff Morales to sign a document in order for them to give him his weekly pay.

54. Defendants never gave any notice to Plaintiff Morales, in English and in Spanish (Plaintiff Morales' primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

55. Defendants required Plaintiff Morales to purchase "tools of the trade" with his own funds—including a chef coat and chef hat.

Plaintiff Eduardo Aragon

56. Plaintiff Aragon was employed by Defendants from approximately July 2015 until on or about September 2016.

57. Defendants employed Plaintiff Aragon as a catering expediter.

58. Plaintiff Aragon regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

59. Plaintiff Aragon's work duties required neither discretion nor independent judgment.

60. Throughout his employment with Defendants, Plaintiff Aragon regularly worked in excess of 40 hours per week.

61. From approximately July 2015 until on or about September 2016, Plaintiff Aragon worked from approximately 6:00 a.m. until on or about 4:00 p.m. five days a week and from approximately 6:00 a.m. until on or about 6:00 p.m. twice a month (typically 50 to 52 hours per week).

62. Throughout his employment with defendants, Plaintiff Aragon was paid his wages in cash.

63. From approximately July 2015 until on or about September 2016, defendants paid Plaintiff Aragon a fixed salary of $450 per week.

64. However, defendants deducted $30 from Plaintiff Aragon's weekly pay for meals he often was unable to consume.

65. Plaintiff Aragon's pay did not vary even when he was required to stay late or work a longer day than his usual schedule.

66. In fact, twice a month defendants required Plaintiff Aragon to continue working two hours past his scheduled departure time and did not compensate him for the additional time they required him to work.

67. Plaintiff Aragon was never notified by Defendants that his tips were being included as an offset for wages.

68. Defendants did not account for these tips in any daily or weekly accounting of Plaintiff Aragon's wages.

69. In addition, Defendants withheld a portion of all the tips clients paid Plaintiff Aragon for the catering orders.

70. Furthermore, Defendants did not provide Plaintiff Aragon with a statement of wages with each payment of wages, as required by NYLL 195(3).

71. Instead, defendants required Plaintiff Aragon to sign a document in order for them to give him his weekly pay.

72. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Aragon regarding overtime and wages under the FLSA and NYLL.

73. Defendants did not give any notice to Plaintiff Aragon, in English and in Spanish (Plaintiff Aragon's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

Plaintiff Alex Santiago

74. Plaintiff Santiago was employed by Defendants from approximately November 2015 until on or about March 17, 2017.

75. Defendants employed Plaintiff Santiago as a cook and salad preparer.

76. Plaintiff Santiago regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

77. Plaintiff Santiago's work duties required neither discretion nor independent judgment.

78. Throughout his employment with Defendants, Plaintiff Santiago regularly worked in excess of 40 hours per week.

79. From approximately November 2015 until on or about March 17, 2017, Plaintiff Santiago worked from approximately 6:00 a.m. until on or about 4:00 p.m. five days a week (typically 50 hours per week).

80. From approximately November 2015 until on or about February 2017, defendants paid Plaintiff Santiago his wages in cash.

81. From approximately February 2017 until on or about March 2017, defendants paid Plaintiff Santiago his wages by check.

82. From approximately November 2015 until on or about August 2016, Defendants paid Plaintiff Santiago a fixed salary of $470 per week.

83. From approximately September 2016 until on or about January 14, 2017, Defendants paid Plaintiff Santiago a fixed salary of $570 per week.

84. From approximately January 15, 2017 until on or about March 17, 2017, Defendants paid Plaintiff Santiago a fixed salary of $600 per week.

85. However, defendants deducted $30.00 from Plaintiff Santiago's weekly pay for meals he often was unable to consume.

86. No notifications, either in the form of posted notices or other means, were given to Plaintiff Santiago regarding overtime and wages under the FLSA and NYLL.

87. Furthermore, Defendants never provided Plaintiff Santiago with a statement of wages with each payment of wages, as required by NYLL 195(3).

88. Instead, defendants required Plaintiff Santiago to sign a document in order for them to give him his weekly pay.

89. Defendants never gave any notice to Plaintiff Santiago, in English and in Spanish (Plaintiff Santiago's primary language), of his rate of pay, employer's regular pay day, and such

other information as required by NYLL §195(1).

Plaintiff Jorge Alvarez Vilchis

90. Plaintiff Alvarez was employed by Defendants from approximately May 2015 until on or about November 1, 2016 and from approximately November 17, 2017 until on or about March 17, 2017.

91. Defendants ostensibly employed Plaintiff Alvarez as a delivery worker.

92. However, Plaintiff Alvarez was also required to spend a significant portion of his work day performing the non-tipped, non-delivery duties described above.

93. Although Plaintiff Alvarez was ostensibly employed as a delivery worker, he spent more than twenty percent of each day performing non-delivery work throughout his employment with Defendants.

94. Plaintiff Alvarez was also required to spend a significant portion of his work day performing non-tipped duties.

95. Although Plaintiff Alvarez ostensibly was employed as a delivery worker, he spent over 20% of each day performing non-tip work throughout his employment with Defendants.

96. Plaintiff Alvarez regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

97. Plaintiff Alvarez's work duties required neither discretion nor independent judgment.

98. Throughout his employment with Defendants, Plaintiff Alvarez regularly worked in excess of 40 hours per week.

99. From approximately May 2015 until on or about October 2016, Plaintiff Alvarez worked from approximately 5:00 a.m. until on or about 3:00 p.m. three days a week and from approximately 5:00 a.m. until on or about 3:30 p.m. two days a week (typically 61 hours per week).

100. From approximately October 2016 until on or about November 1, 2016 and from approximately November 17, 2016 until on or about March 17, 2017, Plaintiff Alvarez worked from approximately 6:00 a.m. until on or about 6:00 p.m. Mondays to Fridays (typically 60 hours per week).

101. Throughout his employment with Defendants, Plaintiff Alvarez was paid his wages in cash.

102. From approximately May 2015 until on or about March 2017, Defendants paid Plaintiff Alvarez a fixed salary of $400 per week.

103. Plaintiff Alvarez's pay did not vary even when he was required to stay later or work a longer day than his usual schedule.

104. In fact, defendants regularly required Plaintiff Alvarez to stay 30 minutes to one hour past his scheduled departure time three days a week and did not compensate him for the additional time they required him to work.

105. Defendants never granted Plaintiff Alvarez any breaks or meal periods of any length.

106. However, defendants deducted $30.00 from Plaintiff Alvarez's weekly pay for meals he was never able to eat.

107. Plaintiff Alvarez was never notified by Defendants that his tips would be included as an offset for wages.

108. Defendants did not account for these tips in any daily, weekly or other accounting of Plaintiff Alvarez's wages.

109. In addition, Defendants withheld a portion of all the tips clients paid Plaintiff Alvarez for the deliveries he made every day.

110. Prior to March 2017, Plaintiff Alvarez was not required to keep track of his time, nor to his knowledge did the Defendants utilize any time tracking device such as punch cards, that accurately reflected his actual hours worked.

111. Furthermore, Defendants never provided Plaintiff Alvarez with a statement of wages with each payment of wages, as required by NYLL 195(3).

112. Instead, defendants required Plaintiff Alvarez to sign a document in order for them to give him his weekly pay.

113. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Alvarez regarding overtime and wages under the FLSA and NYLL.

114. Defendants never gave any notice to Plaintiff Alvarez, in English and in Spanish (Plaintiff Alvarez's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

115. Defendants required Plaintiff Alvarez to purchase "tools of the trade" with his own funds—including two pairs of black dress pants, three white dress shirts and four pairs of black dress shoes.

Plaintiff Fidel Cantu Ortega

116. Plaintiff Cantu was employed by Defendants from approximately January 2015 until on or about March 2017.

117. Throughout his entire employment, Defendants employed Plaintiff Cantu as a salad preparer.

118. Plaintiff Cantu regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

119. Plaintiff Cantu's work duties required neither discretion nor independent judgment.

120. Throughout his employment with Defendants, Plaintiff Cantu regularly worked in excess of 40 hours per week.

121. From approximately January 2015 until on or about March 2017, Plaintiff Cantu worked from approximately 5:00 a.m. until on or about 3:00 p.m. Mondays to Fridays, from approximately 4:00 a.m. until on or about 3:00 p.m. once a month and from approximately 5:00 a.m. until on or about 4:00 p.m. once a month (typically 60 to 61 hours per week).

122. From approximately January 2015 until on or about January 2017, defendants paid Plaintiff Cantu his wages in cash.

123. From approximately January 2017 until on or about March 2017, defendants paid Plaintiff Cantu his wages by check.

124. From approximately May 2015 until on or about October 2015, defendants paid Plaintiff Cantu a fixed salary of $500 per week.

125. From approximately November 2015 until on or about February 2016, defendants paid Plaintiff Cantu a fixed salary of $550 per week.

126. From approximately February 2016 until on or about March 2017, defendants paid Plaintiff Cantu a fixed salary of $600 per week.

127. Plaintiff Cantu's pay did not vary even when he was required to stay later or work a longer day than his usual schedule.

128. In fact, defendants required Plaintiff Cantu to start working one hour prior to his scheduled start time once a month and continue working one hour past his scheduled departure time Once a month, and did not compensate him for the additional time they required him to work.

129. Although defendants granted Plaintiff Cantu a 30-minute meal break, he often was unable to take it because of the demands of his job.

130. Nonetheless, defendants deducted $30.00 from Plaintiff Cantu's weekly pay for meals he often was unable to eat.

131. No notifications, either in the form of posted notices or other means, were ever given to Plaintiff Cantu regarding overtime and wages under the FLSA and NYLL.

132. Furthermore, Defendants never provided Plaintiff Cantu with a statement of wages with each payment of wages, as required by NYLL 195(3).

133. Instead, defendants required Plaintiff Cantu to sign a document in order for them to give him his weekly pay.

134. Defendants never gave any notice to Plaintiff Cantu, in English and in Spanish (Plaintiff Cantu's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

Defendants' General Employment Practices

135. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiffs (and all similarly situated employees) to work in excess of 40

hours a week without paying them appropriate minimum wage, overtime and spread of hours pay as required by federal and state laws.

136. Plaintiffs were victims of Defendants' common policy and practices which violate their rights under the FLSA and New York Labor Law by, *inter alia*, not paying them the wages they were owed for the hours they worked.

137. Defendants' pay practices resulted in Plaintiffs not receiving payment for all their hours worked, resulting in Plaintiffs' effective rate of pay falling below the required minimum wage rate.

138. Defendants habitually required Plaintiffs to work additional hours beyond their regular shifts but did not provide them with any additional compensation.

139. Defendants required Plaintiff Alvarez to perform general non-delivery, non-tipped restaurant tasks in addition to his primary duties as a delivery worker.

140. Plaintiff Alvarez was employed ostensibly as a tipped employee by Defendants, although his actual duties included greater or equal time spent performing non-tipped duties.

141. Plaintiff Alvarez was not paid at the minimum wage rate by Defendants. However, under state law, Defendants were not entitled to a tip credit because Plaintiff Alvarez's non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever was less). 12 N.Y. C.R.R. § 146.

142. New York State regulations provide that an employee cannot be classified as a tipped employee "on any day… in which he has been assigned to work in an occupation in which tips are not customarily received." (12 N.Y.C.R.R. §§137-3.3 and 137-3.4).

143. Similarly, under federal regulation 29 C.F.R. §531.56(e), an employer may not take a tip credit for any employee time if that time is devoted to a non-tipped occupation.

144. Plaintiff Alvarez's duties were not incidental to his occupation as a delivery worker, but instead constituted entirely unrelated general cafeteria/deli work with duties including the non-tipped, non-delivery duties described above.

145. In violation of federal and state law, as discussed above, Defendants classified Plaintiff Alvarez as a tipped employee and they did not pay him at the required minimum wage rate when they should have classified him as a non-tipped employee and paid him at the minimum wage rate.

146. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly harmed Plaintiffs Alvarez and Aragon by engaging in a pattern, practice, and/or policy of violating the FLSA and the NYLL. This policy and pattern or practice included depriving Plaintiffs Alvarez and Aragon of a portion of the tips earned during the course of employment.

147. Defendants unlawfully misappropriated charges purported to be gratuities received by Plaintiffs Alvarez and Aragon, and other tipped employees, in violation of New York Labor Law § 196-d (2007).

148. Under the FLSA and NYLL, in order to be eligible for a "tip credit," employers of tipped employees must either allow employees to keep all the tips that they receive, or forgo the tip credit and pay them the full hourly minimum wage.

149. Defendants failed to inform Plaintiff Alvarez that his tips would be credited towards the payment of the minimum wage.

150. At no time did Defendants inform Plaintiff Alvarez that they had reduced his hourly wage by a tip allowance.

151. Defendants failed to maintain a record of tips earned by Plaintiff Alvarez for the deliveries he made to customers.

152. Most Plaintiffs were paid their wages in cash.

153. Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the Fair Labor Standards Act and New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

154. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiffs (and similarly situated individuals) worked, and to avoid paying Plaintiffs properly for their full hours worked.

155. Defendants engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL.

156. Defendants' unlawful conduct was intentional, willful, in bad faith, and caused significant damages to Plaintiffs and other similarly situated current and former workers.

157. Defendants failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL.

158. Defendants failed to provide Plaintiffs and other employees with wage statements at the time of their payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL §195(3).

159. Defendants failed to provide Plaintiffs and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

FLSA COLLECTIVE ACTION CLAIMS

160. Plaintiffs bring their FLSA minimum wage, overtime, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants on or after the date that is three years before the filing of this Complaint (the "FLSA Class Period"), as employees of Defendants (the "FLSA Class").

161. At all relevant times, Plaintiffs, and other members of the FLSA Class who were similarly situated, had substantially similar job requirements and pay provisions.

162. At all relevant times, Plaintiffs, and other members of the FLSA Class who were similarly situated, were subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them at the minimum wage and overtime at a one and one-half times their regular rates for work in excess of forty (40) hours per workweek.

163. At all relevant times, Plaintiffs, and other members of the FLSA Class who were similarly situated, were subject to Defendants' willful failure to keep records required by the FLSA.

164. The claims of Plaintiffs stated herein are similar to those of the other employees.

FIRST CAUSE OF ACTION
(VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA)

165. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

166. At all times relevant to this action, Defendants were Plaintiffs' employers within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiffs, controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for their employment.

167. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

168. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

169. In violation of 29 U.S.C. § 206(a), Defendants failed to pay Plaintiffs at the applicable minimum hourly rate.

170. Defendants' failure to pay Plaintiffs at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

171. Plaintiffs were damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA)

172. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

173. Defendants, in violation of 29 U.S.C. § 207(a)(1), failed to pay Plaintiffs overtime compensation at a rate of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

174. Defendants' failure to pay Plaintiffs, and the putative FLSA Class members, overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

175. Plaintiffs were damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(VIOLATION OF THE NEW YORK MINIMUM WAGE ACT)

176. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

177. At all times relevant to this action, Defendants were Plaintiffs' employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiffs, controlled their terms and conditions of employment, and determined the rates and methods of any compensation in exchange for their employment.

178. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, paid Plaintiffs less than the minimum wage.

179. Defendants' failure to pay Plaintiffs the minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

180. Plaintiffs were damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(VIOLATION OF THE OVERTIME PROVISIONS OF THE NEW YORK STATE LABOR LAW)

181. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

182. Defendants, in violation of N.Y. Lab. Law § 190 *et seq*., and supporting regulations of the New York State Department of Labor, failed to pay Plaintiffs overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

183. Defendants failed to pay Plaintiffs in a timely fashion, as required by Article 6 of the New York Labor Law.

184. Defendants' failure to pay Plaintiffs overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

185. Plaintiffs were damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(VIOLATION OF THE SPREAD OF HOURS WAGE ORDER OF THE NEW YORK COMMISSIONER OF LABOR)

186. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

187. Defendants failed to pay Plaintiffs one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiffs' spread of hours exceeded ten hours in violation of New York Lab. Law §§ 190 *et seq*. and 650 *et seq*. and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6.

188. Defendants' failure to pay Plaintiffs an additional hour's pay for each day Plaintiffs' spread of hours exceeded ten hours was willful within the meaning of New York Lab. Law § 663.

189. Plaintiffs were damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(VIOLATION OF THE NOTICE AND RECORDKEEPING REQUIREMENTS OF THE NEW YORK LABOR LAW)

190. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

191. Defendants failed to provide Plaintiffs with a written notice, in English and in Spanish (Plaintiffs' primary language), containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by NYLL §195(1).

192. Defendants are liable to each Plaintiff in the amount of $5,000, together with costs and attorneys' fees.

SEVENTH CAUSE OF ACTION
(VIOLATION OF THE WAGE STATEMENT PROVISIONS OF THE NEW YORK LABOR LAW)

193. Plaintiffs repeat and reallege all paragraphs above as though set forth fully herein.

194. With each payment of wages, Defendants failed to provide Plaintiffs with a statement listing each the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL 195(3).

195. Defendants are liable to each Plaintiff in the amount of $5,000, together with costs and attorneys' fees.

EIGHTH CAUSE OF ACTION
(UNLAWFUL DEDUCTIONS FROM TIPS IN VIOLATION OF THE NEW YORK LABOR LAW)

196. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

197. At all relevant times, Defendants were Plaintiffs' employers within the meaning of the N.Y. Lab. Law §§ 2 and 651.

198. New York State Labor Law § 196-d prohibits any employer or his agents, including owners and managers, from demanding or accepting, directly or indirectly, any part of the gratuities received by an employee, or retaining any part of a gratuity, or any charge purported to be a gratuity, for an employee.

199. Defendants unlawfully misappropriated a portion of Plaintiffs' tips that were received from customers.

200. Defendants knowingly and intentionally retained a portion of Plaintiffs' tips in violations of the NYLL and supporting Department of Labor Regulations.

201. Plaintiffs were damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants by:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members apprising them of the pendency of this action, and permitting them to promptly file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiffs (including the prospective collective class members);

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiffs (including the prospective collective class members);

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiffs' (and the prospective collective class members') compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiffs (including the prospective collective class members);

(f) Awarding Plaintiffs (including the prospective collective class members) damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(g) Awarding Plaintiffs (including the prospective collective class members) liquidated damages in an amount equal to 100% of their damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiffs;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiffs;

(j) Declaring that Defendants violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiffs;

(k) Declaring that Defendants violated the notice and recordkeeping requirements of the NYLL with respect to Plaintiffs' compensation, hours, wages and any deductions or credits taken against wages;

(l) Declaring that Defendants' violations of the New York Labor Law and Spread of Hours Wage Order were willful as to Plaintiffs;

(m) Declaring that Defendants failed to pay Plaintiffs in a timely fashion;

(n) Awarding Plaintiffs damages for the amount of unpaid minimum and overtime wages, and for any improper deductions or credits taken against wages, as well as awarding spread of hours pay under the NYLL, as applicable;

(o) Awarding Plaintiffs damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(p) Awarding Plaintiffs liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage, spread of hours pay, and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable; and liquidated damages pursuant to NYLL § 198(3);

(q) Awarding Plaintiffs (including the prospective collective class members) pre-judgment and post-judgment interest as applicable;

(r) Awarding Plaintiffs (including the prospective collective class members) the expenses incurred in this action, including costs and attorneys' fees;

(s) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(t) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable by a jury.

Dated: New York, New York
April 13, 2017

MICHAEL FAILLACE & ASSOCIATES, P.C.

By: /s/ Michael Faillace

Michael Faillace [MF-8436]
MICHAEL FAILLACE & ASSOCIATES, P.C.
Michael A. Faillace [MF-8436]
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New York, New York 10165

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Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

March 20, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.
(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Alejandro Morales

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: ______________________

Date / Fecha: 20 de marzo de 2017

Michael Faillace & Associates, P.C.
Employment and Litigation Attorneys

60 E 42nd Street, Suite 2020
New York, New York 10165

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Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

March 21, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.
(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Eduardo Aragon

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: Eduardo Aragon

Date / Fecha: 21 de marzo de 2017

Michael Faillace & Associates, P.C.

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60 E 42nd Street, Suite 2020
New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

March 21, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.
(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: **Alex Santiago**

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: Alex

Date / Fecha: 21 de marzo de 2017

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42nd Street, Suite 2540
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Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

March 23, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.
(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Jorge Alvarez Vilchis

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: ______________________

Date / Fecha: 23 de marzo de 2017

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42nd Street, Suite 2540
New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

March 21, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.
(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Fidel Alberto Cantu Ortega

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: ____________________

Date / Fecha: 21 de marzo de 2017